

JS 44 (Rev. 06/17)

**JHS****CIVIL COVER SHEET**

18.Cv.2065

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

JASON CLAYBROOK, individually and on behalf of others similarly situated,

(b) County of Residence of First Listed Plaintiff Montgomery County  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

JTB Law Group, LLC  
155 2nd Street, Suite 4, Jersey City, New Jersey 07302  
(877) 561-0000

**DEFENDANTS**

SOLID WASTE SERVICES, INC. d/b/a J.P. MASCARO AND SONS,

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding    ☐ 2 Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 Transferred from Another District (specify)    ☐ 6 Multidistrict Litigation - Transfer    ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
Fair Labor Standards Act ("FLSA"), 29 U.S.C. §201 et seq.

Brief description of cause:

Failure to pay overtime compensation

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

MAY 16 2018

DATE

05/15/2018

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**JHS**

UNITED STATES DISTRICT COURT

18.CV.2065

**FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.**

Address of Plaintiff: 1637 Summit Ave, Willow Grove, PA 19090

Address of Defendant: 2650 Audubon Rd., Audubon, PA 19403

Place of Accident, Incident or Transaction: 109 Wile Rd. Souderton, PA 18964

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?  
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: Judge Date Terminated:

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

## A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases  
(Please specify) Fair Labor Standards Act ("FLSA"), 29 U.S.C. §201 et seq.

## B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases

(Please specify)

## ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Jason T. Brown, counsel of record do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: 5/15/2018

Attorney-at-Law

PA Bar # 79369

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 5/15/2018

Attorney-at-Law

PA Bar # 79369

Attorney I.D.#

MAY 16 2018

**JHS**

## UNITED STATES DISTRICT COURT

18.CV.2065

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

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Address of Defendant: 2650 Audubon Rd., Audubon, PA 19403

Place of Accident, Incident or Transaction: 109 Wile Rd. Souderton, PA 18964

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?  
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_

Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

## A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases  
(Please specify) Fair Labor Standards Act ("FLSA"), 29 U.S.C. §201 et seq.

## B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases

(Please specify) \_\_\_\_\_

## ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Jason T. Brown, counsel of record do hereby certify:

- ☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$ 50,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 5/15/2018

Attorney-at-Law

PA Bar # 79369

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 5/15/2018

Attorney-at-Law

PA Bar # 79369

Attorney I.D.#

MAY 16 2018





**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

JASON CLAYBROOK, individually and  
on behalf of others similarly situated,

v.

SOLID WASTE SERVICES, INC. d/b/a  
J.P. MASCARO AND SONS,

CIVIL ACTION

NO. 18.Cv.2065

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

<u>5/15/2018</u>	<u>Jason T. Brown</u>	<u>Plaintiff</u>
<b>Date</b>	<b>Attorney-at-law</b>	<b>Attorney for</b>
<u>(201) 630-0000</u>	<u>(855) 582-5297</u>	<u>jtb@jtblawgroup.com</u>
<b>Telephone</b>	<b>FAX Number</b>	<b>E-Mail Address</b>

MAY 16 2018



155 2ND STREET, SUITE 4 • JERSEY CITY, NEW JERSEY 07302 • TEL (201) 630-0000 • FAX (855) JTB-LAWS

WWW.IFIGHTFORYOURRIGHTS.COM

May 15, 2018

**Via Federal Express Overnight**

**# 7722 2962 5530**

ATTN: Clerk of the Court  
United States District Court  
Eastern District of Pennsylvania  
601 Market Street  
Room 2609  
Philadelphia, PA 19106-1797  
Attn: Initial Pleadings

***Re: Claybrook v. Solid Waste Services, Inc. d/b/a J.P. Mascaro and Sons***

Dear Clerk of the Court,

Enclosed for filing please find the following documents for the above-referenced matter:

1. A Credit Card Collection Network Authorization Form for the filing fee \$400;
2. A copy of the Civil Cover Sheet;
3. A copy of the Complaint and Exhibits A-B;
4. Two (2) copies of the Designation Form;
5. A copy of the Case Management Track Designation Form;
6. A copy of the Summons to Defendant Solid Waste Services, Inc. d/b/a J.P. Mascaro and Sons; and
7. A computer disc, in PDF format containing a copy of all documents provided in paper form, in conformity with the Local Rule 5.1.2.

If you have any questions, please feel free to contact our office at (201) 630-0000, or email me at [Bernardo.valdez@jtblawgroup.com](mailto:Bernardo.valdez@jtblawgroup.com).

Thank you for your assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Bernardo Valdez'.

Bernardo Valdez  
Administrative Assistant

Encl.

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

**JASON CLAYBROOK**, individually and on  
behalf of others similarly situated,

Plaintiff,

vs.

**SOLID WASTE SERVICES, INC. d/b/a J.P.  
MASCARO AND SONS,**

Defendant.

Civil Case No.:

**COLLECTIVE AND CLASS ACTION COMPLAINT WITH JURY DEMAND**

Plaintiff Jason Claybrook, individually and on behalf of all others similarly situated, by and through his attorneys, JTB Law Group LLC, hereby brings this Collective and Class Action Complaint against Defendant Solid Waste Services, Inc. d/b/a J.P. Mascaro and Sons, alleges of his own knowledge and conduct and upon information and belief as to all other matters, as follows:

**INTRODUCTION**

1. Plaintiff brings this action for himself and all other similarly situated collective members to recover unpaid overtime compensation, liquidated damages, and reasonable attorneys' fees and costs as a result of Defendant's willful violation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §201 *et seq.* and attendant regulations at 29 C.F.R. § 516, *et seq.*

2. Plaintiff also brings this action for himself and on behalf of all other similarly situated Rule 23 class members to recover unpaid overtime compensation, liquidated damages, pre- and post-judgment interest, and reasonable attorneys' fees and costs as a result of Defendant's willful violation of the Pennsylvania Minimum Wage Act, 43 P.S. § 333.101, *et seq.* ("PMWA") and attendant regulations, 34 Pa. Code § 231.1, *et seq.* as well as the Pennsylvania

Wage Payment and Collection Law, 43 P.S. § 260.1, *et seq.* (“WPCL”).

3. Plaintiff and the putative FLSA collective and Rule 23 class members were employed by Defendant as drivers to perform waste collection and recycling services.

4. Plaintiff and other similarly situated drivers performed primary job duties that do not fall within any exemptions from overtime under the FLSA and PMWA.

5. Plaintiff and other similarly situated drivers regularly worked more than forty (40) hour per week.

6. Regardless of how many hours they worked per week, Defendant paid Plaintiff and other similarly situated drivers a flat daily rate as base pay plus a unit rate for each waste can/bin collected and, on some occasions, hourly pay for extra work performed, without paying them overtime compensation.

7. Defendant violated its statutory and contractual obligations by failing to pay Plaintiff and other similarly situated drivers overtime compensation at a rate of not less than one and one-half (1.5) times their regular rate of pay for hours they worked in excess of forty (40) per workweek.

8. Plaintiff asserts the FLSA claims not only individually, but also on behalf of a putative FLSA collective, defined as:

*All drivers employed by Defendant at any time from 3 years prior to the filing of this Complaint through the date of judgment.*

9. Plaintiff seeks to send a Notice pursuant to 29 U.S.C. § 216(b) to all drivers of Defendant permitting them to assert FLSA claims in this collective action by filing their individual consent forms.

10. Plaintiff asserts the PMWA and WPCL claims not only individually, but also on behalf of a putative class pursuant to Fed. R. Civ. P. 23, defined as:

*All drivers employed by Defendant in the Commonwealth of Pennsylvania at any time from 3 years prior to the filing of this Complaint through the date of judgment.*

11. Defendant has willfully and intentionally committed widespread violations of the above-described statutes and corresponding regulations, in the manner described herein.

### **JURISDICTION AND VENUE**

12. This Court has subject-matter jurisdiction over Plaintiff's FLSA claims pursuant to 28 U.S.C. § 1331 because Plaintiff's claims raise a federal question under 29 U.S.C. § 201, *et seq.*

13. The court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. §1367 because those claims derive from a common nucleus of operative facts as Plaintiff's federal claims.

14. The Court has personal jurisdiction over Defendant because Defendant is incorporated and has a principal place of business in the Commonwealth of Pennsylvania.

15. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) and (3) because Defendant employed Plaintiff in this district and because a substantial portion of the events that give rise to the Plaintiff's claims occurred in this district.

### **PARTIES**

#### **Defendant**

16. Defendant Solid Waste Services, Inc. d/b/a J.P. Mascaro and Sons is a for-profit entity created and existing under and by virtue of the laws of the Commonwealth of Pennsylvania.

17. According to the Pennsylvania Department of State website, Defendant maintains a principal office at 2650 Audubon Rd., Audubon, PA 19403 in Montgomery County.

#### **Plaintiff**



18. Plaintiff Jason Claybrook (“Claybrook”) is a resident of the County of Montgomery and Commonwealth of Pennsylvania.

19. Claybrook was employed by Defendant as a driver at its 109 Wile Rd. Souderton, PA 18964 location.

20. Claybrook was employed by Defendant from approximately May 2017 to April 2018.

21. Claybrook’s written consent to become an FLSA party plaintiff is attached hereto as **Exhibit A**.

### **FACTUAL ALLEGATIONS**

22. At all relevant times, Defendant has operated and controlled an enterprise engaged in commerce as defined under the FLSA.

23. At all relevant times, Defendant generates over \$500,000.00 in revenue per year.

24. At all relevant times, Defendant had two (2) or more employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce.

25. At all relevant times, Defendant is the “employer” of Plaintiff and other similarly situated drivers within the meaning of 29 U.S.C. § 203(d) of the FLSA, 43 P.S. § 333.103(g) of the PMWA and 43 P.S. § 260.2a. of the WPCL.

26. At all relevant times, Plaintiff and other similarly situated drivers are “employees” of Defendant within the meaning of 29 U.S.C. § 203(e)(1) of the FLSA and 43 P.S. § 333.103(h) of the PMWA.

27. At all relevant times, Defendant “suffered or permitted” Plaintiff and other similarly situated drivers to work and thus “employed” them within the meaning of 29 U.S.C. §203(g) of the FLSA and 43 P.S. § 333.103(f) of the PMWA.

28. At all relevant times, Defendant, directly or indirectly, hired Plaintiff and other similarly situated drivers and determined the rate and method of the payment of wages.

29. At all relevant times, Defendant controlled the work schedules, duties, protocols, applications, assignments and conditions of employment of Plaintiff and other similarly situated drivers.

30. Plaintiff and other similarly situated drivers performed primary job duties that do not fall within any exemptions from overtime under the FLSA and PMWA.

31. Plaintiff regularly worked 5 to 6 days a week for Defendant.

32. Plaintiff regularly worked over 40 hours a week for Defendant.

33. Defendant paid Plaintiff a flat daily rate of around \$100 to \$140 as base pay.

34. Defendant additionally paid Plaintiff a unit rate of around \$1.10 for each waste can/bin collected, and on some occasions, hourly pay at a rate of around \$16 for extra work performed.

35. Plaintiff regularly performs waste collection services for Defendant in the areas of Philadelphia, Levittown, Bristol and Morrisville, all of which are within the Commonwealth of Pennsylvania.

36. As a driver performing waste collection services for Defendant, Plaintiff does not make interstate trips.

37. Defendant violated its statutory and contractual obligations by failing to pay Plaintiff and other similarly situated drivers overtime compensation at a rate of not less than one and one-half (1.5) times their regular rate of pay for hours they worked in excess of forty (40) per workweek.

38. For example, attached as **Exhibit B** is a copy of Plaintiff's paystub for the period

from 12/10/2017 to 12/16/2017.

39. The paystub shows that Plaintiff worked 57.07 “daily hours” plus 4 “extra work” hours during this workweek. *See Id.*

40. The paystub shows Defendant paid him a daily rate of \$100 for 6 work days, a unit rate of \$1.10 for 397 units of the waste can/bin collected and an hourly rate of \$16 for 4 hours of extra work performed. *Id.*

41. The paystub shows Defendant failed to pay Plaintiff overtime compensation at a rate of not less than one and one-half (1.5) times his regular rate of pay for hours he worked in excess of forty (40) during the workweek of 12/10/2017 to 12/16/2017. *Id.*

42. The statutes provide that “...all remuneration for employment paid to employees which does not fall within one of [the] seven exclusionary clauses must be added into the total compensation received by the employee before his regular hourly rate of pay is determined” so as to determine his overtime rate. 29 CFR 778.200 (c); *see also* 34 Pa. Code § 231.43, regulations for the PMWA.

43. At all relevant times, Plaintiff and other similarly situated drivers have been subjected to the common pay policies and practices of Defendant as stated herein that violated the FLSA, PMWA and WPCL.

44. Defendant was previously sued in this court for the same wage and hour violations under the FLSA, PMWA and WPCL in the matter of *MCKINNEY, et al v. SOLID WASTE SERVICES, INC., et al.*, Case No.: 2:14-cv-00927-WD.

45. Defendant’s wrongful acts and/or omissions/commissions, as alleged herein, were not made in good faith, or in conformity with or in reliance on any written administrative regulation, order, ruling, approval, or interpretation by the state and/or U.S. Department of Labor

and/or any state department of labor, or any administrative practice or enforcement practice or enforcement policy of such departments.

46. Defendant's violations of the above-described federal and state wage and hour statutes and regulations were willful, arbitrary, unreasonable and in bad faith.

**COLLECTIVE ACTION ALLEGATIONS**

47. Plaintiff re-alleges and incorporates all previous paragraphs herein.

48. Plaintiff brings this action pursuant to Section 216(b) of the FLSA, as an opt-in representative action, for and on behalf of all drivers who have been affected by Defendant's common policies and practices which include failure to pay overtime compensation, in violation of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* ("FLSA") and attendant regulations at 29 C.F.R. § 516, *et seq.*

49. Plaintiff brings this action pursuant to 29 U.S.C. § 216(b) of the FLSA on his own behalf and on behalf of:

*All drivers employed by Defendant at any time from 3 years prior to the filing of this Complaint through the date of judgment.*

Plaintiff reserves the right to amend this definition as necessary.

50. Plaintiff brings this collective action against Defendant to recover unpaid overtime compensation, liquidated damages, and reasonable attorneys' fees and costs pursuant to 29 U.S.C. § 216(b).

51. The collective action further alleges a willful violation of the FLSA and seeks an additional, third year of limitations.

52. Plaintiff seeks to send Notice to drivers of Defendant permitting them to assert FLSA claims in this collective action by filing their individual consent forms, as provided by 29 U.S.C. § 216(b) and supporting case law.

53. Certification of the collective action under the FLSA is appropriate because the employees described herein are “similarly situated” to Plaintiff under 29 U.S.C. § 216(b). The class of employees on behalf of whom Plaintiff brings this collective action are similarly situated because: (a) they had the same job position and performed the same or similar job duties as one another on behalf of Defendant; (b) they were subject to the same or similar unlawful practices and policies as stated herein; and (c) their claims are based upon the same factual and legal theories.

54. The employment relationships between Defendant and every collective member are the same and differ only by name, location, and rates of pay. The key issue—the amount of uncompensated overtime owed to each driver—does not vary substantially among the collective members.

55. Plaintiff anticipates that there will be no difficulty in the management of this litigation. This litigation presents claims under the FLSA, a type that have often been prosecuted on a class wide basis, and the manner of identifying the collective and providing any monetary relief to it can be effectuated from a review of Defendant’s records.

56. Plaintiff and the putative FLSA collective members demand a trial by jury.

### **RULE 23 CLASS ACTION ALLEGATIONS**

57. Plaintiff re-alleges and incorporates all previous paragraphs herein.

58. Plaintiff also seeks to maintain this action pursuant to Fed. R. of Civ. P. 23, as an opt-out class action, for an on behalf drivers who have been affected by Defendant’s common policies and practices which include failure to pay overtime compensation, in violation of the Pennsylvania Minimum Wage Act, 43 P.S. § 333.101, *et seq.* (“PMWA”) and attendant regulations, 34 Pa. Code § 231.1, *et seq.* as well as the Pennsylvania Wage Payment and



Collection Law, 43 P.S. § 260.1, *et seq.* (“WPCL”).

59. Plaintiff brings this Rule 23 class action on his own behalf and on behalf of:

*All drivers employed by Defendant in the Commonwealth of Pennsylvania at any time from 3 years prior to the filing of this Complaint through the date of judgment.*

Plaintiff reserves the right to amend this definition as necessary.

60. Plaintiff brings this Rule 23 class action against Defendant to recover unpaid overtime compensation, liquidated damages, pre- and post-judgment interest, and reasonable attorneys’ fees and costs pursuant to the PMWA and WPCL.

61. The members of the Rule 23 class are so numerous that joinder of all class members in this case would be impractical. Plaintiff reasonably estimates that there are a substantial number of class members in the Commonwealth of Pennsylvania. The Rule 23 class members should be easy to identify from Defendant’s payroll and personnel records.

62. There is a well-defined community of interest among the Rule 23 class members and common questions of law and fact predominate in this action over any questions affecting each individual class member. These common legal and factual questions, include, but are not limited to, the following:

- a. Whether the Rule 23 class members worked more than forty (40) hours in any single workweek; and
- b. Whether the Rule 23 class members were properly paid overtime compensation at a rate not less than one and one-half (1.5) times their regular rate of pay for hours they worked in excess of forty (40) per workweek.

63. Plaintiff’s claims are typical of those of the Rule 23 class members in that they and all other class members suffered damages as a direct and proximate result of Defendants’ common and systemic payroll policies and practices. All of the class members

were subject to the same corporate practices of Defendant, as alleged herein, of failing to pay overtime compensation. Any lawsuit brought by an employee of Defendant would be identical to a suit brought by any other employee for the same violations and separate litigation would cause a risk of inconsistent results.

64. Plaintiff was employed by Defendant in the same capacity as all of the class members. All class members were treated the same or similarly by management with respect to pay or lack thereof. This treatment included, but was not limited to, failure to pay overtime compensation. Thus, there are common questions of law and fact which are applicable to each and every one of the class members.

65. Plaintiff will fully and adequately protect the interests of the class members and have retained counsel who are qualified and experienced in the prosecution of nationwide wage and hour class actions. Plaintiff and his counsel do not have interests that are contrary to, or conflicting with, the interests of the class members.

66. Defendant's corporate-wide policies and practices affected all class members similarly, and Defendant benefited from the same type of unfair and/or wrongful acts as to each class member. Plaintiff's claim arises from the same legal theories as all other class members. Therefore, this case will be more manageable and efficient as a Rule 23 class action. Plaintiff and his counsel know of no unusual difficulties in this case.

67. Plaintiff and the Rule 23 class members demand a trial by jury.

**COUNT I**  
**(29 U.S.C. § 216(b) Individual Claim)**  
**Violation of the Fair Labor Standards Act, 29 U.S.C. § 201, et seq.**  
**Failure to Pay Overtime Compensation**

68. Plaintiff re-alleges and incorporates all previous paragraphs herein.

69. 29 U.S.C. § 207(a)(1) provides:

[N]o employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

70. Plaintiff regularly worked more than forty (40) hours in a workweek.

71. Defendant failed to pay Plaintiff overtime compensation at a rate not less than one and one-half (1.5) times his regular rate of pay for hours he worked in excess of forty (40) per workweek.

72. Defendant's conduct and practices, described herein, were willful, intentional, unreasonably, arbitrary, and in bad faith.

73. Because Defendant willfully violated the FLSA, a three (3) year statute of limitations shall apply to such violation pursuant to 29 U.S.C. § 255(a).

74. As a result of Defendant's uniform and common policies and practices described above, Plaintiff was illegally deprived of overtime compensation earned, in such amounts to be determined at trial, and is entitled to recovery of such total unpaid amounts, liquidated damages, reasonable attorneys' fees, costs and other compensation pursuant to 29 U.S.C § 216(b).

**COUNT II**  
**(29 U.S.C. § 216(b) Collective Action Claim)**  
**Violation of the Fair Labor Standards Act, 29 U.S.C. § 201, et seq.**  
**Failure to Pay Overtime Compensation**

75. Plaintiff re-alleges and incorporates all previous paragraphs herein.

76. 29 U.S.C. § 207(a)(1) provides:

[N]o employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a

workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

77. Plaintiff and the FLSA collective members regularly worked more than forty (40) hours in a workweek.

78. Defendant failed to properly pay Plaintiff the FLSA collective members overtime compensation at a rate not less than one and one-half (1.5) times their regular rate of pay for hours they worked in excess of forty (40) per workweek.

79. Defendant's conduct and practices, described herein, were willful, intentional, unreasonably, arbitrary, and in bad faith.

80. Because Defendant willfully violated the FLSA, a three (3) year statute of limitations shall apply to such violation pursuant to 29 U.S.C. § 255(a).

81. As a result of Defendant's uniform and common policies and practices described above, Plaintiff and the FLSA collective members were illegally deprived of overtime wages earned, in such amounts to be determined at trial, and are entitled to recovery of such total unpaid amounts, liquidated damages, reasonable attorneys' fees, costs and other compensation pursuant to 29 U.S.C § 216(b).

**COUNT III  
(Individual Claim)**

**Violation of the Pennsylvania Minimum Wage Act, 43 P.S. § 333.101, et seq.**  
**Failure to Pay Overtime Compensation**

82. Plaintiff re-alleges and incorporates all previous paragraphs herein.

83. Plaintiff regularly worked more than forty (40) hours in a workweek.

84. Defendant failed to pay Plaintiff overtime compensation at a rate of not less than one and one-half (1.5) times his regular rate of pay for hours he worked in excess of forty (40)

per workweek.

85. Defendant's conduct and practices, described herein, were willful, intentional, unreasonably, arbitrary, and in bad faith.

86. As a result of Defendant's uniform and common policies and practices described above, Plaintiff was illegally deprived of overtime compensation earned, in such amounts to be determined at trial, and are entitled to recovery of such total unpaid amounts, pre- and post-judgment interest, reasonable attorneys' fees, costs and other compensation pursuant to PMWA.

**COUNT IV**  
**(Fed R. Civ. P. 23 Class Action Claim)**  
**Violation of the Pennsylvania Minimum Wage Act, 43 P.S. § 333.101, et seq.**  
**Failure to Pay Overtime Compensation**

87. Plaintiff re-alleges and incorporates all previous paragraphs herein.

88. Plaintiff and the Rule 23 class members regularly worked more than forty (40) hours in a workweek.

89. Defendant failed to pay Plaintiff and the Rule 23 class members overtime compensation at a rate of not less than one and one-half (1.5) times their regular rate of pay for hours they worked in excess of forty (40) per workweek.

90. Defendant's conduct and practices, described herein, were willful, intentional, unreasonably, arbitrary, and in bad faith.

91. As a result of Defendant's uniform and common policies and practices described above, Plaintiff and the Rule 23 class members were illegally deprived of overtime compensation earned, in such amounts to be determined at trial, and are entitled to recovery of such total unpaid amounts, pre- and post-judgment interest, reasonable attorneys' fees, costs and other compensation pursuant to PMWA.



**COUNT V**  
**(Individual Claim)**

**Violation of the Pennsylvania Wage Payment and Collection Law, 43 P.S. § 260.1, et seq.**  
**Failure to Pay Overtime Compensation**

92. Plaintiff re-alleges and incorporates all previous paragraphs herein.

93. Plaintiff regularly worked more than forty (40) hours in a workweek.

94. Defendant failed to pay Plaintiff overtime compensation at a rate of not less than one and one-half (1.5) times his regular rate of pay for hours he worked in excess of forty (40) per workweek.

95. Defendant's conduct and practices, described herein, were willful, intentional, unreasonably, arbitrary, and in bad faith.

96. As a result of Defendant's uniform and common policies and practices described above, Plaintiff was illegally deprived of overtime compensation earned, in such amounts to be determined at trial, and are entitled to recovery of such total unpaid amounts, liquidated damages, pre- and post-judgment interest, reasonable attorneys' fees, costs and other compensation pursuant to WPCL.

**COUNT VI**  
**(Fed R. Civ. P. 23 Class Action Claim)**

**Violation of the Pennsylvania Wage Payment and Collection Law, 43 P.S. § 260.1, et seq.**  
**Failure to Pay Overtime Compensation**

1. Plaintiff re-alleges and incorporates all previous paragraphs herein.

2. Plaintiff and the Rule 23 class members regularly worked more than forty (40) hours in a workweek.

3. Defendant failed to pay Plaintiff and the Rule 23 class members overtime compensation at a rate of not less than one and one-half (1.5) times their regular rate of pay for hours they worked in excess of forty (40) per workweek.

4. Defendant's conduct and practices, described herein, were willful, intentional, unreasonably, arbitrary, and in bad faith.

5. As a result of Defendant's uniform and common policies and practices described above, Plaintiff and the Rule 23 class members were illegally deprived of overtime compensation earned, in such amounts to be determined at trial, and are entitled to recovery of such total unpaid amounts, liquidated damages, pre- and post-judgment interest, reasonable attorneys' fees, costs and other compensation pursuant to WPCL.

**RELIEF REQUESTED**

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief against Defendant:

- (A) A declaratory judgment that Defendant's wage practices alleged herein violate the overtime provisions of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, and attendant regulations at 29 C.F.R. § 516, *et seq.*;
- (B) A declaratory judgment that Defendant's wage practices alleged herein violate the Pennsylvania Minimum Wage Act, 43 P.S. § 333.101, *et seq.* and attendant regulations, 34 Pa. Code § 231.1, *et seq.* as well as the Pennsylvania Wage Payment and Collection Law, 43 P.S. § 260.1, *et seq.*;
- (C) An Order for injunctive relief ordering Defendant to comply with the FLSA, PMWA and WPCL and end all of the illegal wage practices alleged herein;
- (D) Certifying this case as a collective action in accordance with 29 U.S.C. § 216(b) with respect to the FLSA claims set forth herein;
- (E) Certifying this action as a class action pursuant to Fed R. Civ. P. 23 with respect to the PMWA and WPCL claims set forth herein;

- (F) Ordering Defendant to disclose in computer format, or in print if no computer readable format is available, the names, addresses, e-mail addresses, telephone numbers, dates of birth, job titles, dates of employment and locations of employment of all FLSA collective and Rule 23 class members;
- (G) Authorizing Plaintiff's counsel to send notice(s) of this action to all FLSA collective and Rule 23 class members, including the publishing of notice in a manner that is reasonably calculated to apprise the FLSA collective members of their rights by law to join and participate in this lawsuit;
- (H) Designating Lead Plaintiff as the representatives of the FLSA collective and Rule 23 class in this action;
- (I) Designating the undersigned counsel as counsel for the FLSA collective and Rule 23 Class in this action;
- (J) Judgment for damages for all unpaid overtime compensation and liquidated damages to which Plaintiff and the FLSA collective members are lawfully entitled under the FLSA, 29 U.S.C. § 201, *et seq.*, and attendant regulations at 29 C.F.R. § 516, *et seq.*;
- (K) Judgment for damages for all unpaid overtime compensation, liquidated damages and pre- and post-judgment interest to which Plaintiff and the Rule 23 class members are lawfully entitled under the Pennsylvania Minimum Wage Act, 43 P.S. § 333.101, *et seq.* and attendant regulations, 34 Pa. Code § 231.1, *et seq.* as well as the Pennsylvania Wage Payment and Collection Law, 43 P.S. § 260.1, *et seq.*;
- (L) An incentive award for the Lead Plaintiff for serving as representative of the FLSA collective and Rule 23 class in this action;
- (M) Awarding reasonable attorneys' fees and costs incurred by Plaintiff in this action as

provided by the FLSA, PMWA and WPCL;

- (N) Judgment for any and all civil penalties to which Plaintiff and the FLSA collective and Rule 23 class members may be entitled; and
- (O) Such other and further relief as to this Court may deem necessary, just and proper.

**JURY DEMAND**

Plaintiff, individually and on behalf of all other FLSA collective and Rule 23 class members, by and through his attorneys, hereby demand a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure and the court rules and statutes made and provided with respect to the above entitled claims.

RESPECTFULLY SUBMITTED,

Dated: May 14, 2018

By: /s/ Jason T. Brown 

Jason T. Brown

Nicholas R. Conlon (will seek  
admission *pro hac vice*)

Ching-Yuan Teng (will seek  
admission *pro hac vice*)

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